# United States Court of Appeals

## FOR THE EIGHTH CIRCUIT

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**CASE NO. 13-1506**

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**Curtis J Neeley Jr.**

*Plaintiff - Appellant*

**v.**

**Federal Communications Commission, et al.**
*Defendants - Appellees*

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Appeal from U.S. District Court for the Western District of Arkansas – Fayetteville
(5:12-cv-5208-JLH)

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# PETITION FOR REHEARING *EN BANC* PER EXCEPTIONAL IMPORTANCE AND CONFLICT WITH UNITED STATES SUPREME COURT

## INTRODUCTION

Per FRAP Rules 35(a)(2), 35(b)(A), 35(b)(B) and FRAP Rule 40(a)(2); This proceeding involves questions of exceptional importance and each is herein concisely stated. This proceeding presents a question of exceptional importance and involves an issue on which the panel decision conflicts with the authoritative decisions of the United States Supreme Court in *FCC v Pacifica,* which should be the controlling decision in this matter with *FCC v Pacifica* now ripe for Supreme Court reconsideration and this litigation is an ideal vehicle for this..

## QUESTIONS OF EXCEPTIONAL IMPORTANCE

**(a)** The decision of the panel affirming the District Court for Western Arkansas conflict diametrically with controlling Supreme Court holdings regarding regulation of broadcast communications for use in interstate and world-wide commerce in *Federal Communications Commission v Pacifica Foundation,* (1978).

**(b)** The summary affirmation reflects misapprehensions caused by exceptional change in communications culture since *ACLU v Reno. (*96-511) (1997) and *Federal Communications Commission v Pacifica Foundation,* (1978). These misapprehensions are exceptionally important and warrant *en banc* reconsideration of *Neeley Jr v FCC, et al,* (5:12-cv-5208)(13-1506) to preserve consistency of the Supreme Court clearly given in *FCC v Pacifica,* (1978) considering the misapprehensions generally held as landmark in *ACLU v Reno, (*96-511) (1997) described as follows:

> (1) Broadcasts of communications remain pervasively accessible to children whether these be by radio or by wire communications and still warrant common sense regulations by the FCC mandated by the Communications Act of 1934, as amended, preserving both free speech and the safety of children and the fundamental right of parents to raise their offspring as desired.

(2) Broadcasting has always been transmitting communications to multiple public parties without concern for the audience receiving the communications by radio transmissions of video or audio in the past or the wire communications of today misapprehended into [sic] “internet”.

(3) There were over one hundred thousand public comments from each state and United States territory in the current GN 13-86 proceeding. 99.96% of these sought FCC regulation of broadcasts of indecent communications when broadcast to the unknown public consisting of minors or otherwise unwitting recipients and violating the right to be left alone and raise offspring as desired.

**(c)** This summary affirmation leaves modern communications inappropriately unregulated despite the mandate for this in the “Communications Act of 1934” and reflects misapprehensions made by Article III Judges at ages of (79), and (80), supporting misapprehensions made by Article III Judges at ages (72) and (77) reflecting improper behavior due to refusing to retire at the Social Security age accepted for the good behavior of retirement explained as follows:

**(1)** Senior status judges or “elderly” judges should not make rulings rendering the very latest in modern communications technology patently unsafe due to inadequate prior life experience with modern communications technology or these rulings will remain culturally absurd.

**(2)** The $100 fine given by the Supreme Court to Susan B Anthony for voting while female pales to the absurdity of this court flouting the regulation of communications broadcast in interstate and world-wide commerce without respect to the media broadcasting these to unknown, unwitting public likely to be children seeking indecent material.

## CONCLUSION

The severely brain injured appellant will accept the decision of the current judges to void Congressional laws demanding regulation of ALL communications only as misapprehensions intentionally propagating the egregious mistake made in (1997) by the longest ruling justice on the Supreme Court at the age of (77). Holdings by judges over the age of (65) and most certainly after the age (70) will be accepted only as the misapprehensions of angry and confused old men and women unwilling to accept the complete irrelevance of past life experiences for the vast majority of decisions now facing. Failure to finally regulate broadcast communications according to current laws is impossible and *en banc* consideration should exclude judges beyond (70) or preferably (65). This is the regular retirement age established by the Social Security Agency of these great United States.

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Failure is impossible,

/s/ Curtis J Neeley Jr

Curtis J Neeley Jr